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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,089	08/01/2003	Katherine Utz	AJUTZ.0101	3203

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LAW OFFICE OF MICHAEL R. NICHOLS  
3001 S. HARDIN BLVD. STE. 110  
PMB #155  
MCKINNEY, TX 75070

EXAMINER

HAMILTON, ISAAC N

ART UNIT PAPER NUMBER

3724

DATE MAILED: 04/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/633,089

Applicant(s)

UTZ ET AL.

Examiner

Isaac N Hamilton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 August 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Priority***

1. An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence(s) of the specification or in an application data sheet by identifying the prior application by application number (37 CFR 1.78(a)(2) and (a)(5)). If the prior application is a non-provisional application, the specific reference must also include the relationship (i.e., continuation, divisional, or continuation-in-part) between the applications except when the reference is to a prior application of a CPA assigned the same application number. The reference to the provisional application 60/400,760 in the specification, oath and declaration has the wrong filing date, please correct to state that the provisional application was filed August 1, 2002.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 9, 10 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 recites the limitation "the alignment fixture" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

Claim 10 recites the limitation "the alignment fixture" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

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4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Robert (CH108737A). Robert discloses end cap 11; spring-loaded hammer 2; spring 10; axis is collinear with element 1; punch head assembly at the end of element 3; latch 3; first direction is counter clockwise; second direction is clockwise; cam sleeve 1; first cam surface is the surface of slot 9 which is diagonal and not in contact with the cam pin 13 in figure 1; second cam surface is the diagonal surface of slot 9 that is in contact with cam pin 13 in figure 1; groove is the upper portion of slot 9 which contacts pin 8; punch head is the tip of element 3; anvil 12.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Robert. Robert discloses everything but does not disclose splines. It would have been an obvious matter of design choice to make the different portions of the trigger and the hammer of whatever form or shape was desired or expedient. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re*

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*Dailey et al.*, 149 USPQ 47. It would have been obvious to provide splines in Robert in order to improve the rotational inertia of the tool and increase stability during use.

8. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robert in view of Ziegelski, Sr. (2,757,457). Robert discloses everything as noted above, but does not disclose an alignment device. However, Ziegelski, Sr. teaches alignment device 14, 12. It would have been obvious to provide an alignment device in Robert as taught by Ziegelski, Sr. in order to locate center punch marks corresponding to the axis of a template hole having a cylindrical wall. Note flat work surface 10; bore 18; flat surface shown in figure 2.

9. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Robert and Ziegelski, Sr. as applied to claims 8 and 9 above, and further in view of Koller (5,657,676). The combination teaches everything as noted above, but does not teach a concave surface. However, Koller teaches concave surface 29. It would have been obvious to provide a concave surface in the combination as taught by Koller in order to improve the versatility of the tool. Note curved work surface 25.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isaac Hamilton whose telephone number is 571-272-4509. The examiner can normally be reached on Monday through Friday between 8am and 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 571-272-4514. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

UN

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April 4, 2005



Allan N. Shoap  
Supervisory Patent Examiner  
Group 3700